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The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY D. SUTHERLAND and MICHAEL G. VIEIRA

Appeal No. 2007-1221
Application No. 10/695,107
Technology Center 3600

Decided: January 08, 2008

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and DAVID B. WALKER, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-6, 8 and 9. Claims 7 and 10 have been canceled.

THE INVENTION

The Appellants claim an apparatus for supporting one or more articles strapped thereto. Claim 1 is illustrative:

1. An apparatus for supporting one or more articles of various sizes and shapes on a vehicle surface during transport with a mechanized vehicle, the apparatus comprising:

one or more straps;

a planar platform having a body and cooperating with said one or more straps for holding the one or more articles against the platform, the platform further comprising:

a planar top surface for engaging the one or more articles being held by the one or more straps;

a planar bottom surface parallel to the top surface for engaging the vehicle surface;

a plurality of bearing members arranged in succession to enable adjustment of the one or more straps;

a plurality of slots separating said bearing members; and

at least one recess, aligned with said plurality of slots and said bearing members, recessing from the bottom surface into the body of the platform, for accepting said one or more straps through at least two of said slots for engaging the straps against the bearing members and for preventing the straps from engaging the vehicle surface.

THE REFERENCES

Watson	US 5,881,477	Mar. 16, 1999
Fleck (as translated)	DE 199 36 653 A1	Feb. 15, 2001

THE REJECTION

Claims 1-6, 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fleck in view of Watson.

OPINION

We reverse the rejection and remand the application to the Examiner. Regarding the rejection we need to address only the sole independent claim, i.e., claim 1.

Fleck discloses "a device for the detachable holding of tubular bodies, such as gas bottles, pipes, tubular containers or similar items, onto or on the loading surfaces of passenger cars" (p. 1). The device (1) comprises 1) a board-shaped base body (4) having, on its bottom, high coefficient of friction knobs or suction caps (21) and an anti-slip coating (4b), and having, near its edges, slits (10) through which a securing belt (9) passes for fixing the board-shaped body's lateral area (7) to the car, 2) upper surface wedge pairs (17) having surfaces (18) with high coefficients of friction for holding the tubular bodies, and 3) duct-shaped regressions (24) having slits (6) through which attachment belts (5) having a thickness smaller than the height of the bottom knobs or suction caps pass for wrapping around the tubular bodies and holding them against the wedge pairs (pp. 3-5; figs. 1, 3, 10).

Watson discloses a snowshoe having a planar platform (12) with rows of slots (18) therein that permit foot gear securing straps (28, 47) to be located by the user such that the snowshoe accommodates different sizes and shapes of foot gear (col. 2, ll. 63-66; col. 4, l. 66 – col. 5, l. 2; col. 6, ll. 24-25).

The Appellants' claim 1 requires a platform having a planar top surface. The Examiner argues that "the wedge surfaces (18) in Fleck are part of the planar surface (4a) and thus are adapted to engage the article and depending on the shape of the article, the top surface (4a) is capable of engaging the article as well" (Ans. 5). "Planar" means "**1**: of, relating to, or lying in a plane **2**: two-dimensional in quality", wherein a plane is "**1 a**: a surface of such nature that a straight line

joining two of its points lies wholly in the surface **b**: a flat or level surface".[1] The Appellants' flat platform (1; figs. 1, 2) is consistent with that definition. Fleck's board-shaped base body having wedges thereon (fig. 3) clearly is not two dimensional, does not have a surface such that a straight line joining two of its points lies wholly in the surface, and is not a flat or level surface. Hence, Fleck's board-shaped base body having wedges thereon is not a planar surface. The Examiner, therefore, has not established a prima facie case of obviousness of the Appellants' claimed invention.

Remand

We remand the application for the Examiner and the Appellants to address on the record whether claim 1 is anticipated under 35 U.S.C. § 102(b) by Watson, and whether the other claims are anticipated by Watson or obvious over Watson alone or in combination with other prior art.

The preamble of claim 1 recites: "An apparatus for supporting one or more articles of various sizes and shapes on a vehicle surface during transport with a mechanized vehicle". As indicated by the Appellants' Specification, "supporting … on a vehicle" means setting the apparatus on "any vehicle surface, such as but not limited to, an automobile trunk, floor, seat, a truck bed, a boat deck, seat or galley, an aircraft seat or floor, etc." (Spec. 4:5-7). The apparatus' platform "is larger in area than the bottom of the article to prevent the article from tipping when supported by a surface of a vehicle" (Spec. 2:16-18). Like the Appellants' platform, Watson's planar platform (12) is capable of being placed on a vehicle surface. Because, like the Appellant's platform, Watson's planar platform is larger than the article (shoe) attached to it (fig. 1), Watson's planar platform is capable of supporting the article as the term "supporting" is used by the Appellants.

[1] *Webster's New Collegiate Dictionary* 877-78 (G. & C. Merriam 1973).

Watson's apparatus comprises:

straps (28, 47) (col. 6, ll. 24-25) that are removable (fig. 4) or permanently fastened (fig. 5) to a planar platform (12) having a body and cooperating with the straps for holding an article (snowshoe) against the platform (col. 4, l. 67 – col. 5, l. 1; fig. 1), the platform further comprising

a planar top surface for engaging an article (fig. 1), and

a bottom surface parallel to the top surface (fig. 6).

Regarding the planar top and bottom surfaces the Appellants' Specification states (Spec. 4:7-16):

> Both surfaces 22 [top planar surface] and 24 [bottom planar surface] of the platform 1 are made of, or coated with, a slip-resistant material, such as but not limited to rubber, elastomeric material, hard foam, soft plastic or the like. The purpose of the slip-resistant surfaces 22 and 24 is to prevent slipping, sliding, shifting or movement of the articles being supported and carried by the carrier 20, and to prevent slipping, sliding, shifting or movement of the carrier 20 on the surface 10 of the vehicle. The platform 1 itself may be composed of such a slip-resistant material. In the case of a more complex structural geometry for the platform, such as wireform, the portions of the platform 1 that engage the surface 10 of the vehicle and the articles 6, shall be coated with a slip-resistant surface.

The disclosure that the platform can have a more complex geometry such as a wireform indicates that it need not be smooth but, rather, can have a more irregular texture such as that of meshed wires. Also, the disclosure that the listed slip-resistant materials are not limiting indicates that "planar bottom surface" in claim 1 encompasses a surface coated with other slip-resistant materials such as granular materials that provide surface irregularity. The Examiner and the Appellants should address on the record whether any bottom surface irregularity permitted by the Appellants' claim term "planar bottom surface" encompasses the irregularity

due to Watson's stiffening ribs (22, 24) and curved lip (20) (col. 5, ll. 34-39; fig. 4).

Watson's platform further comprises:

a plurality of bearing members (portions of decking 17 between slots 18; col. 5, ll. 8-9; fig. 1),

a plurality of slots (18) separating the bearing members (fig. 1),

at least one recess between decking 17 and the bottoms of stiffening ribs 22 and 24 (fig. 4), the at least one recess being aligned with the slots and bearing members, recessing the bottom surface into the body of the platform, accepting the straps through at least two of the slots for engaging the straps against the bearing members, and preventing the straps from engaging the vehicle surface (fig. 4).

The Examiner and the Appellants should address the patentability of each of the Appellants' claims over Watson, alone or in combination with other prior art.

DECISION

The rejection of claims 1-6, 8 and 9 under 35 U.S.C. § 103 over Fleck in view of Watson is reversed. The application is remanded to the Examiner.

REVERSED and REMANDED

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